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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EPIC GAMES, INC.,

Plaintiff,

v.

APPLE INC.

Defendant.

Case No. 4:20-cv-05640-YGR-TSH

**DECLARATION OF SHANE M. PALMER
IN SUPPORT OF NON-PARTY SPOTIFY
USA INC.'S ADMINISTRATIVE
MOTION TO PARTIALLY SEAL
SPOT-EPIC-00000932**

1 I, Shane M. Palmer, declare as follows:

2 1. I am an attorney at the law firm of Sullivan & Cromwell LLP, and counsel
3 to Non-Party Spotify USA Inc. (“Spotify”). I am a member in good standing of the Bars of the
4 States of New York and California and a member of the Bar of this Court. I have personal
5 knowledge of the facts set forth in this declaration and can testify competently to those facts.

6 2. I submit this declaration pursuant to Local Rule 79-5(d) in support of
7 Spotify’s Administrative Motion to Seal SPOT-EPIC-00000932, submitted concurrently herewith.

8 3. Spotify produced the document bearing Bates numbers
9 SPOT-EPIC-00000932 through SPOT-EPIC-00000943 to Apple Inc. (“Apple”) and Epic Games,
10 Inc. (“Epic”), in response to subpoenas that Apple and Epic served on Spotify in this action
11 pursuant to Federal Rule of Civil Procedure 45 on December 2, 2020, and December 8, 2020,
12 respectively (the “Subpoenas”).

13 4. Prior to producing any documents to Apple and Epic in response to the
14 Subpoenas, I spoke with counsel for Apple and Epic and indicated that certain information sought
15 by the Subpoenas constitutes Spotify’s trade secrets. I explained to counsel for Apple and Epic
16 that Spotify would not produce documents containing its proprietary, competitively sensitive
17 business information except pursuant to a supplemental protective order that would ensure
18 additional protections for Spotify’s information and prohibit Apple and Epic from sharing
19 Spotify’s documents with their employees or in-house counsel.

20 5. At Spotify’s request, on February 4, 2021, Apple and Epic jointly filed a
21 Stipulated Supplemental Protective Order Governing Discovery from Spotify (“Supplemental
22 Protective Order”) (Dkt. No. 320). The Court entered this Supplemental Protective Order, as
23 modified by the Court, on February 11, 2021 (Dkt. No. 334).

24 6. On February 16, 2021, Spotify made a production of documents to Apple
25 and Epic in response to the Subpoenas, which included the document produced by Spotify bearing
26 Bates numbers SPOT-EPIC-00000932 through SPOT-EPIC-00000943. When it produced this
27 document to Apple and Epic, Spotify properly designated it as “SPOTIFY HIGHLY
28

CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY” pursuant to Section C of the Supplemental Protective Order.

7. On May 9, 2021, I received an email from counsel for Apple, informing me that “in connection with upcoming expert testimony estimated to begin on Wednesday, May 12, Apple intends to disclose Spotify’s Response to Information Request From the JFTC, produced in this litigation by Spotify at Bates SPOT-EPIC-00000932 through SPOT-EPIC-00000943.” On May 11, 2021, I emailed Apple’s counsel to ask whether Apple consents to Spotify’s filing of a motion to seal the contents of this document, to the extent that it is used or discussed at trial. Apple’s counsel informed me later on May 11 that Apple consents to Spotify’s motion to seal this document.

8. Also on May 11, 2021, I emailed counsel for Epic to ask whether Epic consents to Spotify’s filing of a motion to seal the contents of the document bearing Bates numbers SPOT-EPIC-00000932 through SPOT-EPIC-00000943, to the extent that it is used or discussed at trial. Epic’s counsel informed me later on May 11 that Epic consents to Spotify’s motion to seal this document.

9. True and correct copies of the document that Spotify produced to Apple and Epic bearing Bates numbers SPOT-EPIC-00000932 through SPOT-EPIC-00000943 are attached hereto as Exhibit A, in both redacted and unredacted form. The unredacted version of Exhibit A has been highlighted to indicate the portions of the document that Spotify is seeking to seal in the instant Motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed this May 11, 2021, at Brooklyn, New York.

/s/ Shane M. Palmer
Shane M. Palmer

ATTESTATION

I, Brendan P. Cullen, am the ECF User whose ID and password are being used to file this document with the Clerk of the Court using CM/ECF, which will send electronic notification of such filing to all registered counsel. In compliance with Local Rule 5-1(i)(3), I hereby attest that all signatories concur with this filing.

Dated: May 11, 2021

/s/ Brendan P. Cullen

Brendan P. Cullen